



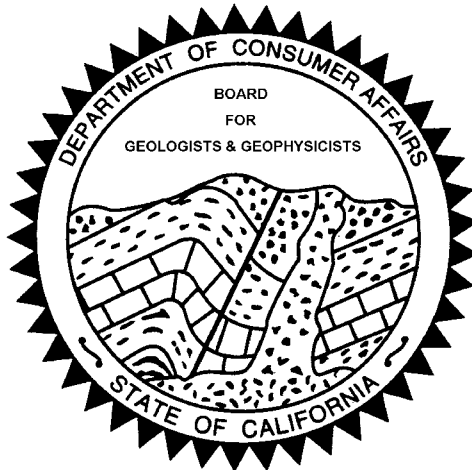
**BOARD FOR GEOLOGISTS AND GEOPHYSICISTS**  
2535 CAPITOL OAKS DRIVE, SUITE 300A, SACRAMENTO, CA 95833-2926  
TELEPHONE: (916) 263-2113  
FAX: (916) 263-2099  
E-mail: [geology@dca.ca.gov](mailto:geology@dca.ca.gov)  
Website: [www.geology.ca.gov](http://www.geology.ca.gov)



**STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**BOARD FOR GEOLOGISTS AND GEOPHYSICISTS**

**ENFORCEMENT PROCEDURES**



**Paul Sweeney  
Executive Officer**

**George Dunfield  
Enforcement Manager**

**2535 CAPITOL OAKS DRIVE, SUITE 300A  
SACRAMENTO, CALIFORNIA 95833  
(916) 263-2113  
(916) 263-2099 (FAX)  
[geology@dca.ca.gov](mailto:geology@dca.ca.gov) (e-mail)  
[www.dca.ca.gov/geology](http://www.dca.ca.gov/geology) (website)**

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*The Mission of the Board for Geologists and Geophysicists is to Continuously Enhance the  
Quality, Significance, and Availability of Geological and Geophysical Services Offered to the People of California*

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## **PREFACE**

This document assists the staff of the California State Board for Geologists and Geophysicists to implement a fair and uniform enforcement policy, encourage compliance and prosecute violations of the Geologist and Geophysicist Act and the Rules and Regulations adopted pursuant to provide for the protection of the consumer and the public. The purpose of this document is to outline the procedures generally associated with the enforcement function of the Board. These procedures are guidelines for the Board's executive officer and staff in the handling of enforcement-related matters. This Enforcement Procedures document is an internal office document that has no legal status and can be used, modified or disregarded depending on the circumstances of a particular case and to the extent that procedures specified herein are not mandated by statutes or regulations.

# INTRODUCTION

## Overview

The California Board for Geologists and Geophysicists is mandated to protect the public's health, safety and welfare by ensuring that individuals are competent to practice geology and geophysics and that the laws governing the practice of geology and geophysics are enforced in a fair and judicious manner. The Board members have the power, duty and authority to initiate, receive and investigate alleged violations of the provisions of the Business and Professions Code, Chapter 12.5, Division 3, Section 7800 seq. of the Geologist and Geophysicist Act. The Board is also given specific authority to discipline violators of the Geologist and Geophysicist Act.

Policies described and interpretations presented have been established by actions of the Board, opinions of the AG or DCA's Legal Office and by directives from the Board's EO.

## Abbreviations

ACT	Geologist and Geophysicists Act
AG	Attorney General
ALJ	Administrative Law Judge
CA	City Attorney
CCR	California Code of Regulations
DA	District Attorney
DAG	Deputy Attorney General
DCA	Department of Consumer Affairs
DOI	Division of Investigation
EO	Executive Officer
OA	Office of Administrative Hearings

## Definitions

Board - The Board for Geologists and Geophysicists  
Board Member - A member of the Board for Geologists and Geophysicists  
Board Staff - A person on the staff of the Board for Geologists and Geophysicists  
Complainant - A person who files a charge or makes a complaint in court  
Respondent - A person who responds to a complaint adjudicated by the Board

## CHAPTER 1

## COMPLAINT PROCESS

### Source of Complaints

Complaints or reports of alleged violation may be sent to the Board from several sources including:

- Members of the public;
- City/county/state officials;
- Other licensed professionals;
- Licensees of the Board;
- Board staff; and
- Board members.

### Complaints Procedures

Once a complaint is received in writing, the Board's staff conducts an evaluation of the technical and jurisdictional aspects of the complaint.

An acknowledgment letter is sent to the complainant within 10 days of receipt of the complaint.

A letter may be sent to the respondent if staff determines that the alleged violation appears to have merit. If a technical expert needs to be consulted or if staff needs more time, the letter to respondent is typically mailed as soon as determination is made that there possibly has been a violation.

The letter to the respondent summarizes the complaint and requests a response within 20 days to explain his/her position on the matter. If the respondent does not reply within 20 days, a second letter is sent certified mail, returned receipt requested. The Board staff may proceed with an investigation at its discretion if no response or an inadequate response is received.

### Technical Expert

Staff may refer the case to a technical expert to determine if a violation of the Act has occurred. Staff will request that the technical expert make this determination within approximately 30 days from the receipt of final case-related information by the technical expert. If new information is developed, the technical expert may be called on from time to time to assist in the evaluation of the case and participate as needed if the case proceeds to informal conference or hearing.

## **Complaint Mediation**

When a complaint alleges a minor and/or technical violation of state law, it may not be serious enough to warrant the expense and time of disciplinary action. In these cases, the Board often seeks to mediate and resolve the complaint to satisfaction of the public interest. Typically, a warning letter is sent directing that the respondent cease and desist his/her unlawful activities (See Warning Letter, Page 5). In some cases, a citation may be issued and a fine may be assessed (See Citation and Fine, Page 5.).

The Board's enforcement staff seeks to obtain compliance on a voluntary basis whenever possible. If compliance cannot be attained, the Board members take appropriate legal action necessary to attain compliance and to discipline the respondent.

## **Division of Investigation**

If the alleged violation requires field investigation, the case is forwarded with all supporting documentation to DCA's DOI. The investigator assigned to the case is directed to file a written status or final report to the Board within 30 days.

DOI is generally authorized to expend 10 hours per investigation. If additional hours are required, a request must be submitted to the Enforcement Manager or Analyst, who approves or disapproves the request.

At the conclusion of an investigation, the investigator(s) may recommend that disciplinary, civil or criminal action be taken against the licensee or that the case be closed.

A case may be closed if there is:

- ◆ No violation;
- ◆ Insufficient evidence to proceed with legal or administrative action; or
- ◆ No significant violation and the licensee agrees to comply with California law.

The final decision to pursue criminal or disciplinary action is made by the EO.

Criminal violations may be referred to the local DA for action. Civil actions such as injunctive relief are normally referred to the AG's Office. Disciplinary actions against a licensee are referred to the AG's Office for action.

The DOI investigator may refer cases for criminal violations to the local district attorney after consultation with and approval of the EO.

Enforcement staff prepares the case summary with all of the attachments and forwards the case to the appropriate AG office for evaluation and scheduling for hearing.

## **CHAPTER 2      DISCIPLINARY PROCESS**

### **Warning Letter**

The investigation of a complaint may reveal that an individual did, in ignorance or accidentally, violate a section of the Act. If such violation did not endanger the health, safety or welfare of the public or property, the EO may deem that a warning letter to the individual is appropriate.

The warning letter is sent to the respondent via certified mail with return receipt and regular U.S. mail with proofs of service. Copies of the letters are filed in the enforcement case file. The warning letter generally includes:

- Brief reference to the sections of the Act violated;
- Substance of the observed violations;
- Copies of the relevant sections of the Act; and
- A statement that the warning letter is being placed in the license and complaint files, is subject to review and will be considered in any future complaints filed against the respondent.

The case is then closed and the complainant notified.

### **Citation and Fine**

The EO is authorized to issue citations containing orders of abatement and/or administrative fines up to \$2,500. Citations may be issued to licensees determined to be in violation of the Act and unlicensed persons offering to practice or engaging in the practice of geology, geophysics or a Board certified specialty.

Each citation for violation shall be in writing and shall describe with particularity, the basis for the citation including specific reference to the provision of law determined to have been violated.

Each citation may contain an order of abatement and/or an administrative fine not to exceed \$2,500. Original citations are sent via certified mail with return receipt and regular US mail to the last known address of the cited person.

The EO has the power of telephone disconnection of unlicensed practitioners of geology. Refer to section 3062 of the Rules and Regulations for additional requirements.



## **Accusation/ Statement of Issues**

The Administrative Procedures Act (Government Code, Sections 11500 through 11528) mandates the process to deny, suspend or revoke a license.

If an individual appeals the Board's decision to deny a license, the appeal process is initiated by filing a statement of issues. The respondent has the burden of proving that he/she possesses the qualifications for licensing. If the denial was based on a criminal conviction, the respondent must designate that he/she is rehabilitated from the act(s) or crime(s) that serves as the basis for denial of his/her application.

An action to suspend or revoke a license is initiated by the filing of an accusation. In an accusation, the Board members have the burden of proving that the licensee committed the act(s) and/or omission(s) that serve as the basis for the disciplinary action.

In both cases, a DAG represents the Board and coordinates all necessary legal procedures. If a case is referred to the AG's Office and is accepted for action, a DAG is assigned the matter to prepare a statement of issues or accusation.

The DAG drafts the statement of issues or accusation and forwards it to the EO for review and filing. The EO signs and dates the document and returns it to the DAG.

The DAG serves the document on the respondent. The respondent may contest the charges by filing a notice of defense because the law requires an opportunity for a hearing, or he/she may stipulate to mutually agreeable conditions. The DAG schedules a hearing with OAH before an ALJ.

## **Stipulation**

Rather than proceeding to a formal hearing, the parties may stipulate (agree) to a determination of violations charged against the respondent and to a penalty. Stipulations are negotiated by the DAG representing the Board members and respondent and his/her legal counsel. In negotiating a stipulation, the DAG must work closely with the EO to arrive at a stipulation acceptable to the Board. Once negotiated, the DAG drafts the stipulation.

The stipulation is presented to the Board members for their consideration in much the same way that a proposed decision is presented (See Proposed Decision, page 8.). In the case of a stipulation, the Board members have more latitude to modify terms as part of the negotiation process beyond the mere contents of an accusation. However, the Board members should confine their consideration to information that is relevant to the accusation. Although there is no time limited within which a stipulation must be considered, undue delays shall be avoided.

### **Hearing Process**

At the administrative hearing, both parties introduce evidence and witnesses to present oral and documentary evidence. The respondent also has the right to confront his/her accusers.

Although the Board members may sit with the ALJ and hear the case, most cases are heard by the ALJ sitting alone. Boards typically do not sit with the ALJ because it is an expensive procedure and may last several days to several weeks.

### **Prehearing Conference**

The ALJ may order a pre-hearing conference. The conference may deal with matters that promote the orderly and prompt conduct of a hearing such as settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, matters regarding evidence, subpoenas and protective orders, scheduling, motions for intervention and alternative dispute resolution.

### **Settlement Conference**

The ALJ may order the parties to attend and participate in a settlement conference. The ALJ at the settlement conference cannot preside as ALJ at the hearing unless so stipulated by the parties.

### **Default Decision**

A default decision may be rendered if the respondent fails to file a notice of defense or to appear at the hearing.

**Effective Date of Decision**

A decision is effective 30 days after the date mailed to respondent.

**Proposed Decision**

After hearing the case and considering all the evidence presented, the ALJ renders a proposed decision containing findings of fact, a determination of issues and, if a violation is deemed proven, a proposed penalty. The proposed decision is submitted to the Board members for consideration and a final decision.

The only evidence upon which the Board members make a decision is the evidence presented at the hearing. Evidence received outside the hearing (e.g., through telephone calls, reputation in the professional community, letters, information from staff, etc.) cannot be considered. The respondent's constitutional rights to due process may be violated, and the entire disciplinary action may be invalidated if evidence is received outside the hearing. If Board members received such information, they immediately must write a letter to the executive officer explaining the circumstances and recuse themselves from discussions regarding final action and voting on the case.

The Board members may vote on the proposed decision by mail ballot or at a meeting in a closed session. The three basic options the Board members have when considering a proposed decision are:

- Adopt the proposed decision including the proposed penalty;
- Adopt the proposed decision and reduce the penalty; and
- Non-adopt the proposed decision.

The Board members must vote on the proposed decision within 100 days of its receipt, by the Board or the proposed decision is final as proposed by the ALJ.

**Rejecting a Decision**

The Board members may choose to non-adopt a proposed decision of an ALJ for several reasons which might be grouped generally under the following categories:

- The Board finds the penalty or terms of probation

inappropriate for the violation(s).

- The Board disagrees with the ALJ's determination of the issues.
- The Board disagrees with the ALJ's findings and determination that no grounds for discipline exist.

When a proposed decision is not adopted, the Board members must order the transcript of the hearing and documentary evidence unless this requirement is waived by all parties. Each Board member must read the entire transcript and consider only that evidence presented at the hearing. The DAG and the respondent are entitled to submit oral or written arguments to the Board members. The Board members must render a decision after reading the transcript and arguments within 100 days from the receipt of the transcript. Only that portion of the Decision with which the Board disagrees should be rewritten. DCA's Legal Office can prepare the Board members' decision. Prompt service of the decision must be made on the respondent and his/her attorney, and a copy is sent to the DAG.

### **Reconsideration Process**

Prior to the effective date of the Decision, the respondent has the right to request the Board members to reconsider their decision by filing a petition for reconsideration. The respondent presents written argument to the Board members requesting dismissal of the charges or modification of the penalty. If the effective date passes and/or the Board members do not act on the petition, it is deemed to be denied.

### **Appeal Process**

A respondent has the right to appeal disciplinary action imposed by the Board members by filing a writ of mandamus in superior court. This is a request by the respondent for a stay or postponement of the Board's decision. A court has the authority to uphold or set aside a decision or return the case to the Board members with specific directions for further consideration.

A decision rendered by a superior court can be further appealed to the court of appeals and then to the Supreme Court by either the Board members or the respondent. After one year has elapsed since the effective date of the

## **Petition for Reinstatement or Reduction of Penalty**

Board's decision, the subject of the action has the right to petition the Board members for reinstatement of a revoked license or modification of any other conditions. The respondent is referred to as the petitioner in these matters. The petitioner has the burden of proving that he/she is rehabilitated and should have his/her license reinstated or the penalty terminated or modified.

The Board members sitting with an ALJ hear these petitions. If the Board members decide to deny the petition, they must state their reasons. If a petition for reinstatement is granted after revocation, the Board members may impose a period of probation with terms and conditions. If the terms and conditions of probation are violated, the license may be revoked after ratification through the administrative hearing process.

In some cases, the acts of a licensee are serious enough to warrant criminal prosecution. Disciplinary action may occur concurrently.

Disciplinary action may also result after criminal prosecution. In these cases, the Board members may petition a court as part of a criminal trial to suspend or revoke a license as a condition of probation (Penal Code, Section 23).

## **Criminal Actions**

In addition, where the individual is unlicensed but engaged in activities that require a license, criminal sanctions may be sought.

The Board members may refer the matter directly to the local DA or CA, or the DOI may refer the matter to the local DA or CA for prosecution after consultation with and approval of the EO.

In some cases, other state agencies or law enforcement agencies may independently investigate and prosecute a licensee for violations pertaining to his/her practice.

## CHAPTER 3

## ENFORCEMENT POLICIES

### **Board's Role in Complaint Process**

Board members should not participate in the enforcement process until asked to vote on a proposed decision. To do so subjects a Board member to disqualification in any disciplinary action against the licensee in the matter and the Board member must recuse himself or herself from that case. When deciding what action to take on a proposed decision, Board members must consider only the accusation, documents introduced in evidence at the hearing, the proposed decision, and any petitions. Consideration of any evidence outside the official record is grounds for disqualification and the Board member must recuse himself or herself from the case.

To exercise its oversight responsibilities in extraordinary circumstances, the Board may designate one Board member to review a specific case on behalf of the Board. That member must then recuse himself or herself from the case.

In order to avoid the appearance that the Board member may unilaterally intervene with the complaint review process, procedures that must be followed are:

1. Any member desiring to review a specific complaint/investigation file must obtain the prior approval of the Board.
2. The Board is to provide clear direction to the member regarding the scope and nature of his/her review.
3. A report of the Board member's general findings, excluding the particulars of the specific case, should be presented subsequently to the Board.
4. The EO must maintain a list of all complaint/investigation files reviewed by a particular Board member that should include his/her identity and the date of the review.
5. A Board member who has any substantive knowledge of the case or has a business or personal relationship with the respondent should disqualify himself/herself from participation in the complaint review process in order to avoid any appearance of bias or conflict of interest.

## **Complaint Closure Policy**

A case shall be closed if:

1. There is insufficient substantiation of the violation.
2. The complaint falls within the jurisdiction of another agency, and it is referred to the appropriate entity.
3. Evidence of compliance is obtained in the violation.
4. The Board members adopts, amends or rejects an ALJ's proposed decision or adopts a stipulation.
5. Letter of the disposition of the complaint has informed everyone involved or contacted during the investigation phase.
6. The public interest has been satisfied in criminal court.

## **Disciplinary Guidelines**

The Board's Disciplinary Guidelines establish a range of recommended penalties and terms and conditions of probation for specified violations. The guidelines were adopted to facilitate uniformity of penalties. They provide general guidance to licensees as to what can be expected for violations of the Geologists and Geophysicists Act and the DAG and EO in negotiating stipulations and to the ALJ for consideration in preparing proposed decisions.

## **Investigation Priorities**

The Board members have established a systematic approach for selecting cases for formal investigation and discipline. Priorities are set to best utilize available funds and staff to meet the Board's mandate. The Board's investigation priorities are:

1. Alleged violations that place an individual's life, health, safety or welfare in immediate danger.
2. Alleged violations that may have an impact on or potential for affecting the life, health, safety or welfare of present or future clients and uses or the public.
3. Repeat offenses.

4. Cases involving licensees with prior disciplinary actions.
5. Cases which can be quickly resolved or remedied by immediate minimal intervention of the Board.
6. Allegations of aiding and abetting illegal practice by licensees.
7. Allegations that an unlicensed person is engaged in the unlawful practice of geology or geophysics
8. Allegations concerning illegal use of the terms "Registered Geologist", "Registered Geophysicist", "Certified Engineering Geologist" or "Certified Hydrogeologist".

## **Legal Opinions**

If a statute is unclear as to intent or meaning, the Board's EO may request a legal interpretation from DCA's legal staff or the AG. An opinion from the department's legal staff is informal but may be sufficient for the Board members to take action or make decision. AG opinions are generally formal and published. The AG's opinion provides an interpretation of the law unless changed by court action or legislation.

## **Inquiries**

Board staff routinely interprets the ACT in responding to correspondence and telephone inquiries. Such interpretations can be appealed to the Board.

## **Rights of Complainants**

Information contained in complaints filed with the Board or the opinions of the Board's technical experts is privileged communications. The attached privilege to these communications is absolute. This absolute privilege would be available as a defense to any civil action for slander or defamation arising out of an individual's statement made to the Board members in connection with a disciplinary proceeding.